May-16-2005 17:19

From-COZEN O'CONNOR

215-665-2013

T-809 P.007/010 F-818

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DOCKET NO.: WYTH0146-101

(AM100831 P1)

MAY 1 6 2005

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors: John C. McKew

Confirmation No.: 7235

Serial No.: 10/722,782

Group Art Unit: 1624

Filed: November 26, 2003

Examiner: HABTE, KAHSAY

Title: PROCESS FOR MAKING AN ALDEHYDE

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On May 16, 2005

Michael Straher Reg. No. 38,325

Commissioner for Patents PO Box 1450 Alexandria, VA 22313-1450

Dear Sir:

RESPONSE TO THE RESTRICTION REQUIREMENT

The present Response is filed in regard to the Restriction Requirement mailed February 14, 2005 in connection with the above-identified patent application.

The Examiner has mistakenly restricted claims 1-14 into 10 groups. Group I contains claims 1-3 (in part) drawn to AA being pyrimidinyl, classified in class 544, subclass 242. Group II contains claims 1-3 (in part) drawn to AA being quinolinyl and isoquinolinyl, classified in class 546, subclass 139 and 152. Group III contains claims 1-3 (in part) drawn to AA being pyridinyl, classified in class 546, subclass 314. Group IV contains claims 1-3 (in part) drawn to AA being oxazolyl and isoxazolyl, classified in class 548, subclass 215 and 240. Group V contains claims 1-3 (in part) drawn to AA being thioazolyl, classified in class 548, subclass 146

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and 206. Group VI contains claims 1-4 (in part) and 8-14, drawn to AA being indolyl, classified in class 548 and subclass 469. Group VII contains claims 1-3 (in part) drawn to AA being pyrrolyl and furyl, classified in class 548, subclass 530 and in class 549, subclass 429. Group VIII contains claims 1-7 (in part) drawn to AA being phenyl, naphthyl and biphenyl (no heteroatom in the ring), classified in class 568, subclass various. Group IX contains claims 1-3 (in part) drawn to AA being alkenyl or alkynyl (no ring), classified in class various, subclass various. Group X contains claims 1-3 (in part) drawn to AA being others (Groups that do not fall into Groups I-IX), classified in class various, subclass various.

Solely to comply with the present restriction, Applicant elects Group VI (AA = indolyl), containing claims 1-4 (in part) and 8-14, with traverse.

In substantiating a proper restriction of the claims in an application, the Office Action must satisfy two criteria. First, the Office Action must show that the application claims independent or distinct inventions. Second, the Office Action must show that examining all claimed invention in a single application would constitute a serious burden. M.P.E.P. §803. Applicant respectfully asserts that the Office Action has not satisfied the criteria for substantiating a proper restriction of the claims.

Specifically, the Office Action has not shown that conducting a prior art search for claims 1-14 would constitute a serious burden. And, in fact, conducting a prior art search for these claims would not constitute a serious burden to the Office. As the claims clearly recite, the present invention provides a process of converting a dihalomethyl compounds to an aldehyde. A prior art search for the conversion of a dihalomethyl compound to an aldehyde is a straight forward search, and the Office has the resource to conduct this search without burden.

Further, Applicant respectfully reminds the Office that the Office cannot refuse to examine that which applicants regard as their invention, unless the subject matter in a claim lacks unity of invention. The USPTO defines unity of invention as follows:

¹ The Court of Customs and Patent Appeals ("CCPA") held in In re Weber, 580 F.2d 455, 458-49, 198 U.S.P.Q. 328, 331-332

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Broadly, the unity of invention exists where compounds included within a Markush group

(1) share a common utility, and

(2) share a substantial structural feature disclosed as being essential to that utility.

MPEP §803.02 (citing In re Harnish, 631 F.2d 716, 206 USPQ2d 1059 (Bd. Pat. App. & Int. 1984)).²

The present restriction of the claims into ten Groups is improper for at least the reason that such restriction amounts to refusing to examine claim 2, which recites a Markush group containing dihalomethyl compounds (and which correspond to the various dihalomethyl compounds identified by the Office in the ten restricted Groups).

Clearly, the subject matter in claim 2 has both unity of invention, and a shared structural feature. Specifically, all the dihalomethyl compounds recited in the Markush group share the common utility of being used as a reagent for forming an aldehyde, and also possess the shared structural feature that is essential to the utility (the dihalomethyl group from which the aldehyde is formed). Since the subject matter in claim 2 has unity of invention, the subject matter of the Markush group should be examined together in this application. The present restriction into ten Groups is therefore improper, and amounts to a refusal to examine claim 2 in its entirety. Thus, the Office should withdraw the restriction requirement and examine all the claims.

Should the Office persist in the present restriction, Applicant respectfully requests supervisory review of the restriction.

⁽CCPA 1978), that the United States Patent and Trademark Office ("USPTO") cannot require an applicant to divide up the embodiments of a single Markush claim. The invention in Weber was related to cyclic diamine derivatives possessing a common psychotherapeutic property and identified by a single generic formula expressed in Markush format. The examiner found that the main claim embraced 24 enumerated independent and distinct inventions. The examiner sought to divide the claim by rejecting it as an improper Markush claim and under 35 USC §121 for misjoinder. The court viewed the rejection as tantamount to a refusal to examine the claims. 35 U.S.C. §121 gives the USPTO authority to restrict between claims of an application reciting one or more independent and distinct inventions. In re Weber, 580 F.2F at 458, 198 USPQ at 331-332. It does not, however, provide authority to reject a claim on that basis, with the idea of requiring an applicant to break up the claim and present it in several applications. Id., 198 USPQ at 332. An applicant has a statutory right to claim an invention as he sees fit. Id.

The Markush claims in *Harnish* defined certain compounds having a single structural similarity (a single core structure called a "coumarin group") and possessing the same unity as dyestuffs. In holding that unity of invention existed for these claims, the CCPA found that these two properties (the single structural similarity and single utility) sufficiently circumscribed a genus of a single invention. *In re Harnish*, 631 F.2d at 722, 206 USPQ at 305.

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PATENT FILED: May 16, 2005

Applicants submit that the present response is complete and complies with the requirements of 35 U.S.C. §121. In addition, Applicants submit that claims 1-14 must be considered in the present application without restriction.

Respectfully submitted,

Michael P. Straher Reg. No. 38,325

Date: May 16, 2005

COZEN O'CONNOR 1900 Market Street Philadelphia, PA 19103-3508 Telephone: (215) 665-5548 Facsimile: (215) 701-2327 PHILADELPHIA
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Examiner Kahsay Habte		
Art Unit 1624		
US Patent Office	571 272 0667	571 273 8300

MESSAGE:

OFFICIAL FAX!!!

Serial No. 10/722,782 filed 11/26/03

Transmittal Form (1 page)

Fee Transmittal in dup. (2 pages)

Request for 2 Month Extension in dup. (2 pages) Response to Restriction Requirement (4 pages)

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T-809 P.002/010 F-818

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U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

		Application Number	10/722,782
TRANSMIT	TAL .	Filing Date	11/26/03
FORM		First Named Inventor	John C. McKew
		Art Unit	1624
		Examiner Name	Kahsay Habte
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 /	Michael B. Stoher		Date 5/16/05

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Michael P. Straher

Typed or printed name

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May 16, 2005

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	Effective on 12/08/2004. Complete if Known					
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).			Application Number 10/722,782			
FEE TRANSMITTAL			Date	11/28/03		
for FY		First N	amed Inventor	John C. McKew		
Applicant claims small entity s	tatus. See 37 CFR 1.27	Exami	ner Name	Kahsay Habic		
		Art Un	t	1624		
TOTAL AMOUNT OF PAYMENT	(\$) 450	Attorne	y Docket Na.	WYTH0146-101 (AM	/100831 P1)	
METHOD OF PAYMENT (check	call that apply)		1			
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Plant 200	100	300	150	160	80	
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Provisional 200	100	0	0	0	0	
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Michael P. Straner

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Effective on 12/08/2004.

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

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Deposit Account Deposit Account Number: 50-1275 For the above-identified deposit account, the Director is hereby authorized to: (check all that apply) Charge ere(s) indicated below Charge ere(s) indicated below Charge any additional fee(s) or underpayments of fee(s) Under 37 CPR 1.68 and 1.77 WARNING: Information and authorization on PTO-2538 WARNING: Information and authorization on PTO-2538 FEE CALCULATION 1. BASIC FILING, SEARCH, AND EXAMINATION FEES FILING FEES Small Entity Application Type Fee (s) Fee Paid (s) Fee (s) Fee Paid (s) Total Claims Extra Claims Fee(s) Fee Paid (s) Total Shoets First Shoets Number of load-and-and claims paid for, if greater han 20. Indep. Claims Fet Stra Sheets Number of each additional 80 or fraction thereof Fee (s) Fee Paid (s) Non-English Specification, \$130 fee (no small entity discount) Other (c.g., late filling surcharge): Periden for Ext. Submitted By Submi	METHOD OF PAYMENT (check all	I that apply)					
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14 -20 or HP= 0 x = 0 Fee (\$) Fee Paid (\$) HP = highest number of total claims paid for, if greater than 20. Indep. Claims Extra Claims Fee(\$) Fee Paid (\$) 1 -3 or HP= 3 x = 0 HP = highest number of independent claims paid for, if greater than 3. 3. APPLICATION SIZE FEE If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s). Total Shoets Extra Sheets Number of each additional 50 or fraction thereof Fee (\$) Fee Paid (\$) - 100 = / 50 = (round up to a whole number) x = 4. OTHER FEE(S) Non-English Specification, \$130 fee (no small entity discount) Other (c.g., late filing surcharge): Petition for Ext. SUBMITTED BY Registration No. (Alterney/Agens) \$8.325 Telepnane 215 865 2000 May 18, 2005			laime Foo/\$	\ Fa	o Paid (\$)			
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Tris exlection of information is required by \$7 CFR 1.138. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentially is governed by \$5 U.S.C. 122 and \$7 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case, Any comments on the amount of time you require to complete this form and/or suggestions for reducing this outport, should be son! to the Chief information Officer, U.S. Peters and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450, DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patants, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing this form, call 1-800-PTO-9199 (1-800-788-9199) and select option 2.